

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

BENJAMIN G. MCDONALD and
KATHERINE F. MCDONALD, husband and
wife,

Plaintiffs,

vs.

SAFEWAY, INC.; SAFEWAY STORES INC.
#1503; SAFEWAY FUEL CENTER #1503;
JOHN DOE CORPORATIONS OR
PARTNERSHIPS 1-3; "JANE DOE"
GENERAL MANAGER and "JOHN DOE"
GENERAL MANAGER; "JANE DOE"
ASSISTANT MANAGER and "JOHN DOE"
ASSISTANT MANAGER, wife and husband;
and "JOHN DOE" EMPLOYEES 1-5",

Defendants.

No.

NOTICE OF REMOVAL OF
CIVIL ACTION UNDER
28 U.S.C. §§ 1332, 1441 AND 1446

(REMOVED FROM THURSTON
COUNTY SUPERIOR COURT CAUSE
NO. 21-2-00262-34)

TO: CLERK OF THE COURT;

AND TO: Plaintiffs, by and through their counsel of record.

PLEASE TAKE NOTICE that Defendant Safeway, Inc. ("Safeway") hereby removes to
this Court the state court action described below on the grounds stated herein and as supported by
the Declaration of Roy A. Umlauf and the exhibits attached thereto.

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AND 1446 – PAGE 1

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I. INTRODUCTION AND STATEMENT OF FACTS

On February 22, 2021, plaintiffs Benjamin G. McDonald and Katherine F. McDonald, (“Plaintiffs”), commenced a lawsuit in Thurston County Superior Court entitled *Benjamin G. McDonald and Katherine F. McDonald v. Safeway, Inc., et al.*, cause number 21-2-00262-34. Defendant Safeway, Inc. was served with the Summons and Complaint on February 17, 2021. *Declaration of Roy A. Umlauf*, at Exhibit 1.

This Notice of Removal is timely under 28 U.S.C. §1446(b)(1) because it is being filed “...within thirty days after receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based...” 28 U.S.C. §1446(b)(1). Plaintiffs are claiming more than \$75,000 in damages, pursuant to a March 5, 2021 email and plaintiffs response to Defendant Safeway’s Request for Admission. *Umlauf Decl.*, at Ex. 2 and 3.

Safeway, Inc. is the only properly named Defendant. Safeway, Inc. is a Delaware corporation with headquarters located in Pleasanton, California. *Umlauf Decl.*, at Ex. 4. Safeway, Inc. is a wholly-owned subsidiary of Alberton’s Holdings, LLC. *Umlauf Decl.* at ¶ 5. There is no Washington Corporation named Safeway Stores Inc. #1503 or Safeway Fuel Center #1503. *Id.* and at Ex. 5 and 6. It is Defendant’s position that Safeway, Inc. is the only properly named Defendant.

II. BASIS FOR REMOVAL

A. There Is Complete Diversity of Citizenship Under 28 U.S.C. §1332

This Court has subject matter jurisdiction over this civil action pursuant to 28 U.S.C. §1332(a)(1), and this action is one that can be removed to this Court by defendant under 28 U.S.C.

§1441(b) in that it is a civil action between citizens of different states and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

Plaintiffs are residents of Thurston County, Washington. *Umlauf Decl.*, at Ex. 1. Defendant Safeway, Inc. is a Delaware corporation with headquarters located in Pleasanton, California. *Umlauf Decl.*, at Ex. 4. Defendants Safeway Stores Inc. #1503 or Safeway Fuel Center #1503 are not proper parties to this suit nor are they even Washington Corporations. *Umlauf Decl.* at ¶ 5 and Ex. 5 and 6. Removal of the plaintiffs' action to this Court is proper because there is complete diversity of citizenship of the parties pursuant to 28 U.S.C. § 1332, and there was complete diversity at the time plaintiffs' lawsuit was served.

B. The Amount in Controversy Exceeds the Jurisdictional Minimum

Plaintiffs' counsel confirmed plaintiffs are claiming more than \$75,000 in damages in a March 5, 2021 via email. *Umlauf Decl.*, at Ex. 2. Plaintiffs' further confirmed they are claiming more than \$75,000 in damages in their response to Defendant Safeway, Inc.'s Request for Admissions by denying that they are not seeking damages in excess of \$75,000. *Umlauf Decl.*, at Ex. 3. This information is sufficient to conclude that plaintiffs seek to recover in excess of \$75,000 in damages against Defendant.

C. This Notice of Removal Is Timely Under 28 U.S.C. §1446(b)

This Notice of Removal is timely under 28 U.S.C. §1446(b) because it is being filed "...within thirty days after receipt by the defendant, through service or otherwise, of a copy of initial pleading setting forth the claim for relief upon which such action or proceeding is based..." 28 U.S.C. § 1446(b)(1).

D. This Notice of Removal Complies with the Applicable Local Rules and Venue Is Proper in the Western District of Washington Under 28 U.S.C. §128(b)

1 This Notice of Removal complies with all applicable Federal Rules of Civil Procedure and
 2 Local Rules. Defendant has attached to this Declaration of Roy A. Umlauf, filed in support of this
 3 Notice, copies of all process, pleadings, and orders served upon it in the state court action, as
 4 required by 28 U.S.C. §1446. Venue is proper in this District pursuant to 28 U.S.C. §§128(b) and
 5 1391, because this District encompasses Thurston County, the county listed in the state court the
 6 Complaint that was filed and served on Defendant.

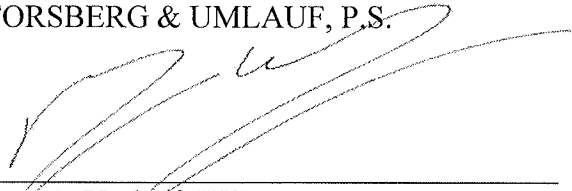
7 Defendant is serving Plaintiffs with copies of this Notice of Removal and the supporting
 8 Declaration of Roy A. Umlauf (with exhibits).

9 **III. CONCLUSION**

10 Plaintiffs' civil action, originally venued in Thurston County Superior Court for the State
 11 of Washington, may be removed pursuant to 28 U.S.C. 1441 and 1446 to the United States District
 12 Court for the Western District of Washington at Tacoma.

13 Dated this 25th day of March, 2021.

14 FORSBERG & UMLAUF, P.S.

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 16 _____
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CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing ***NOTICE OF REMOVAL OF CIVIL ACTION UNDER 28 U.S.C. §§ 1332, 1441 AND 1446*** on the following individuals in the manner indicated:

Mr. Harold D. Carr
Mr. Adam Cox
Harold D. Carr, P.S.
4239 Martin Way E.
Olympia, WA 98516-5335
(X) Via Email: haroldcarrlaw@comast.net; adam@haroldcarrattorney.com;

SIGNED this 25th day of March, 2021, at Seattle, Washington.

/s/ Erin D. Gray
Erin D. Gray